IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24107 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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NIKUNJKUMAR VINUBHAI KACHHADIA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR AK MAVLANKAR FOR GIRISH PATEL ASSOC for Petitioner(s) : 1,
MR HEMANG H. PARIKH, AGP. for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 18/12/2007

ORAL JUDGMENT

1 Rule. Learned Assistant Government Pleader for the

respondent-State is directed to waive service. In light of the view that the Court is inclined to adopt the petition is taken up for final hearing and disposal today.

2 The petitioner, a student, has preferred this petition through his father against the decision of the respondent authority in rejecting the application of the petitioner under the Free Tuition Fee Scheme of the Government of Gujarat only on the hyper technical ground that the income certificate produced by the petitioner does not contain the round seal of the Taluka Development Officer who has signed the certificate.

3 The learned Advocate for the petitioner submitted that the certificate in question bears the signature and round stamp of Talati-cum-Mantri of the village and seal of the panchayat, the Certificate also contains signature and stamp of Taluka Development Officer, Amreli. The only thing that is missing is the round seal as stated by the respondent authority. There is no dispute as to the fact that the petitioner has obtained admission in self financed institution, *Dharamshi Desai Institute of Technology* , *Nadiad* on merits having secured 90% marks at the H.S.C. Examination. That the income certificate

produced by the petitioner has not been doubted as not being genuine by the respondent authority. In the circumstances, a direction is sought qua the respondent authority from denying the benefit of Free Tuition Fee Scheme to the petitioner.

4. The learned Assistant Government Pleader appearing on behalf of the respondent authority initially tendered Affidavit-in-Reply dated 08.10.2007 and stated that apart from the absence of round seal in the income certificate the other reason was that the seats available for Electronics and Communication Course in the institute had already been filled up and no seat was available, and therefore, the application of the petitioner had been rejected. Then learned Assistant Government Pleader was questioned as to where was the prescription for round seal ? He was not in a position to point out such a requirement in the scheme.

5. At this stage, the learned Assistant Government Pleader sought time to obtain instructions. The learned Assistant Government Pleader has furnished a tabular statement showing the vacancies in different courses in different institutions in relation to seats available for benefit under the Free Tuition Fee Scheme. From the said statement, which has

been placed on record, it becomes apparent that in so far as the course in which the petitioner is studying there is no vacancy, but there is a vacancy in two other courses with the same institute.

6. The learned Advocate for the petitioner, therefore, sought instructions from the petitioner and has made a statement that the petitioner student does not intend to change the course and would opt to continue with Electronics and Communication Engineering course with the same institute, subject to the petitioner being considered and granted the benefit under the scheme from next Academic Year onwards.

7. Thus, in light of what is stated hereinbefore, it is clear that the petitioner is entitled to succeed on merits as the ground on the basis of which the application of petitioner was rejected by respondent No.3 Authority is not tenable in law. However, considering the period of the current Academic Year which has elapsed, it would be just and proper if the petitioner is permitted to continue his studies in the same course in which admission has been secured. The respondent authority is hereby directed to ensure that the case of the petitioner is

considered from the next Academic Year onwards and granted the benefit of Free Tuition Fee Scheme of the State Government without raising any other technical objection.

8. The petition is allowed accordingly. Rule made absolute to the aforesaid extent. There shall be no order as to costs.

Sd/-
(D.A. Mehta, J.)

m.m.bhatt